

Chronology of Oregon Board of Forestry and Oregon Department of Forestry Regulations and Policies Forest Pesticide Applications near Inhabited Dwellings

Following is a timeline of events related to requirements in past forest practice rules regarding pesticide applications near inhabited dwellings. The information is compiled from Oregon Department of Forestry documents.

- **1972.** The Oregon Board of Forestry adopted the first implementation of Oregon's forest practice rules enacted by the 1971 Legislative Assembly. The original rules did not mention or prohibit chemical applications near inhabited dwellings.
- **1978.** The Board of Forestry revised OAR 629-24-203 to add the following requirement: "When applying 2,4,5-T or Silvex, maintain a 200 foot buffer strip around Class I streams or areas of open water. Maintain a 500 foot buffer strip around inhabited dwellings unless written permission is received from the resident." ODF rule guidance dated 1985 indicates that the 500 foot buffer was intended to apply only to applications of 2,4,5-T and Silvex.
- **1979.** The U.S. Environmental Protection Agency canceled registrations for forest use of 2,4,5-T and Silvex. Those pesticides are not currently registered for use in forestry in the United States.
- **1988.** The Board of Forestry revised OAR 629-24-203, dividing the rule into separate sections, removing any references to buffer strips related to the use of 2,4,5-T or Silvex, and adding the following text for section (4) of the rules: "*When applying herbicides by aircraft near inhabited dwellings, the operator shall leave an unsprayed strip of at least 60 feet adjacent to such dwellings.*" Two ODF memoranda dated July 21, 1988 and July 26, 1988 indicate that the Board intended that there would be no chemical residue in the buffer zone near inhabited dwellings. However, Department rule guidance dated March 6, 1995 indicated that the intent of the rule was that the dwelling would be protected by requiring an application setback (buffer zone), and that incidental drift into the zone would be acceptable as long as no direct application took place in that area. The guidance also noted that the buffer zone was to be measured in horizontal distance rather than along the slope.
- **February 1990.** ODF produced a report titled "A Proposal Regarding the Administration of Chemical Rules under the Oregon Forest Practices Act (dated February 8, 1990)." The report noted that regulations for forestry pesticide applications were more restrictive than for other land uses and that this appeared to be inequitable for forest landowners. The report also noted that the Board of Forestry was being asked by other interests to further restrict pesticide use on forestland. The report examined related legal responsibilities and authorities and recommended a formal review of the forest practice chemical rules, with a further recommendation that the Board rely in greater measure on pesticide product label requirements (administered by the U.S. Environmental Protection Agency and ODA) for protection of human health and property. A legal opinion obtained for the report by the Department of Justice indicated that the Oregon Forest Practices Act probably did not

authorize the Board of Forestry to adopt regulations to protect such facilities as organic farms or dwellings.

- **March 1990.** The Board of Forestry reviewed citizen concerns regarding the forest practice chemical rules. Based on public comment and the ODF staff report, the Board directed the State Forester to:
 - Enter into discussions with the ODA Director to develop a cooperative agreement that would clarify the respective roles of the two agencies.
 - Conduct a study of current forest practice chemical application rules to determine consistency with the terms of the cooperative agreement (when completed) and other applicable pesticide control laws. Note: *The Board subsequently determined that a legislatively mandated review of the forest practice water classification and protection system took immediate priority, so study of forest practice rules was delayed.*
- **1994.** After a lengthy review process, the Board of Forestry adopted revised water classification and protection rules, now called the Water Protection Rules and numbered as Oregon Administrative Rules 629-635-000 through 629-660-000. To account for the water classification changes, the Board also revised and reorganized OAR 629-24-203. The changes did not alter the 1988 requirement for an unsprayed strip within 60 feet of inhabited dwellings; the requirement was moved from section (4) to the new section (6). During this rulemaking process, the Board of Forestry and ODF committed to a full review of the chemical rules in the near future.
- **1995.** The Oregon Board of Forestry and ODA completed a memorandum of agreement noting that ODF and ODA would cooperate in forest pesticide regulation based on each agency's legislative charge. The memorandum indicates that ODA would take primacy in administration of federal pesticide regulations, pesticide product label requirements, and Oregon's Pesticide Control Law. ODF would work under that regulatory umbrella, taking primacy for administration of the forest practice rules, for example regulations relating to notification of ODF for chemical application or application buffer zones along fish-bearing streams on forestland. The agreement also directs that the two agencies will cooperate closely in administering pesticide regulations on forestland.
- **1995-1996:** As directed by the Board of Forestry, ODF led a review of the forest practice chemical rules. The department conducted the review with the assistance of an advisory committee. To focus the process, the Board of Forestry developed objectives and guiding principles, which stated that:
 - Pesticide regulations should be consistent across land uses.
 - The Oregon Board of Forestry did not have statutory authority through the Oregon Forest Practices Act to impose measures for the protection of human life, health, or property from damage related to chemical applications.
 - The Board recognized that protection of human life, health, and property was important, but that such protection was more properly provided by the pesticide product label requirements and by Oregon's Pesticide Control Law (ORS 634).

- **June 1996.** An ODF staff report to the Board of Forestry reiterated the interpretation that:
 - The Board of Forestry did not have the authority to adopt rules to protect dwellings; and
 - Such protection was already adequately provided by regulations administered by the Oregon Department of Agriculture.
- **January 1997.** Based on the 1996-1997 review, the Board of Forestry revised the forest practice chemical rules; the changes took effect January 1, 1997. The rules were renumbered from OAR 629-24 to OAR 629-0620 as part of an overall renumbering of the forest practice rules. Based on the Board of Forestry's guiding principles of June 1996, the requirement for a no herbicide application buffer around inhabited dwellings was removed. In OAR 629-620-0000(5), the Board noted that forest pesticide applications were subject to all the following, in addition to the forest practice rules:
 - Pesticide control laws, administered by ODA.
 - Hazardous waste laws, administered by the Oregon Department of Environmental Quality.
 - Hazard communication rules, administered by the Oregon Occupational Safety and Health Division (OR-OSHA).
 - Water use laws administered by the Oregon Water Resources Department.
 - Maximum contaminant levels in drinking water established by the Oregon Health Division (now DHS Public Health).

